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December 18, 2008

Via Facsimile (404) 562-8054
U.S. Mail and Email

U.S. Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Building
61 Forsyth Street S.W., 9th Floor
Atlanta, GA 30303-8960

CONTROL NO	00154-09	
DATE DUE	1/16/09	
SEARCHED	INDEXED	FILED
SERIALIZED	APR 10	SEP 10
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Re: Freedom of Information Act Request - Shepherd Bend Mine, ADEM
NPDES Permit Number AL0079162

Dear FOIA Officer:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELCL") requests all documents in the possession or control of the Environmental Protection Agency ("EPA") that relate to the NPDES permit for Shepherd Bend LLC and the proposed Shepherd Bend Mine. The NPDES permit number is AL0079162. For reference the proposed Shepherd Bend Mine is a coal mine located in Walker County, Alabama. This proposed project would discharge into the Mulberry Fork branch of the Black Warrior River. The documents should include, but are not limited to the following:

- The NPDES permit;
- All correspondence relating to the NPDES permit and the Shepherd Bend Mine, including any communication between the EPA, the Alabama Department of Environmental Management ("ADEM"), Shepherd Bend LLC, any involved representatives or consultants, and any other agency, company, or person relating to the project;
- Any documents relating to the NPDES permit, permit application, and issuing of the permit;
- Any photographic analyses, including any photographs, maps, or drawings, that may have been prepared in relation to this site;
- Any documents related to any site visits, including any handwritten information recorded during those visits; and

- Any documents related to all testing and water quality determinations made regarding the Mulberry Fork of the Black Warrior River, its tributaries, and any other connected waters.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the United States Army Corps of Engineers.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. See 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo.1994); Erlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." Pederson, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects (See e.g., "Where are We Growing: Land Use and Transportation in the Greater Richmond Area," http://www.southernenvironment.org/cases/vdot_reform/richmond_report.pdf). Lawyers at SELC are interviewed by the media to explain their work and its significance. (See e.g., "Judge Halts Landing Field," Raleigh News and Observer, February 19, 2005, <http://www.newsobserver.com/news/growth/story/2140513p-8522056c.html>). SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See e.g., "Smart Mobility Report: Review of Tri-County Parkway Location Study," http://www.southernenvironment.org/newsroom/publications/smart_mobility_tri_county.pdf). SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.